

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2981 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAHUVA NAGAR PALIKA

Versus

RALIATBEN BHURA & ORS.

Appearance:

MR RJ OZA for Petitioner

None present for Respondent No. 1, 2, 3, 4, 5, 6, 7

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/01/97

C.A.V. JUDGEMENT

1. The petitioner by this petition is challenging the award of the Labour court, Rajkot made in Reference (LCR) No.671/79 decided on 31st December, 1983. A reference has been made relating to the demand of age of superannuation of the employees working in the petitioner Nagarpalika. The workman has claimed the age of superannuation to be of 60 years whereas the NagarPalika has come up with a case that the age of superannuation is

58 years.

2. The learned counsel for the petitioner contended that the age of superannuation for the employees of Nagarpalika is of 58 years and the Tribunal has wrongly held that the age of retirement is 60 years. However, the counsel for the petitioner does not dispute regarding the correctness of the age of the employees whose cases were there before the Labour court for consideration. The counsel for the petitioner placed reliance on Rule 21 of the Municipal Employees Service Rules. That rule reads as under:

RULE-21:

Any person, below the age of 18 years and above the age of 58 years will not be kept either on temporary, Adhoc or permanent services:

AMENDMENT:

But with the approval of the General-Body the employees may be continued in service upto the age of 60 years (Approved by Award Notification No.KHL 485/AJ-M-1378-C-1172-JH, dtd.10.5.78.

From the reading of the aforesaid rule, it is apparent that the age of retirement is 58 years. However, with the approval of the General Body, the employees may be continued in service upto the age of 60 years. That amendment has been made in the aforesaid rule. The extension of employment upto the age of 60 years is a provision given and it can be applicable only with the approval of the General Body, but the Labour court has erred in taking the age of retirement to be 60 years on the basis of this provision. A distinction in extension of the employment after the age of superannuation has to be drawn which was not done in the present case. The age of superannuation and the power to retain the employees thereafter in the service are two different and distinct things which cannot be clubbed together. The extension is only permissible for a maximum period of two years. The age of superannuation is not 60 years, but after the age of superannuation an employee with the approval of the General Body of the NagarPalika could have been retained in the service upto the age of 60 years. So even after retirement an employee could have been retained in the service for a maximum period of two years which has wrongly been taken to be the age of retirement. It is a case where there is an error apparent on the face of the award of the Labour court and as such, it cannot be allowed to stand.

3. In the result, this Special Civil Application succeeds and the award of the Labour court is quashed and set aside. Rule made absolute.

zgs/-